

## **I. CITY OF FALLS CHURCH STANDARD PROVISIONS**

- A. Section Headings: The headings of the sections in the “Standard Provisions” and/or “General Conditions and Instructions to Offerors” are inserted for convenience only and are not intended to affect the meaning or interpretation of this solicitation or any resultant contract.

### **1. Authority to Transact Business in Virginia**

A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described herein that enters into a Contract with the City pursuant to the Virginia Public Procurement Act 2.2-4300 et seq. shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50 of the Code of Virginia, to be revoked or cancelled at any time during the term of the Contract. The City may void any Contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

Any foreign corporation transacting business in Virginia shall secure a certificate of authority as required by Section 13.1-757 of the Code of Virginia, from the State Corporation Commission, Post Office Box 1197, Richmond, Virginia 23209. The Commission may be reached at (804) 371-9733. The consequences of failing to secure a certificate of authority are set forth in Virginia Code Section 13.1-758.

### **2. Choice Of Law and Courts**

Any contract resulting from this solicitation is made, entered into, and shall be performed in the City of Falls Church, Virginia, unless otherwise specified, and shall be governed in all respects by the applicable laws of the Commonwealth of Virginia. Any litigation with respect thereto shall be brought in the courts of the Commonwealth. Any dispute arising out of the contract, its interpretations, or its performance shall be litigated only in either the General District Court of the City of Falls Church or in the Circuit Court of the County of Arlington, Virginia.

### **3. Compliance With Laws**

The Contractor shall comply at its own expense with all federal, state, and local laws, rules, regulations, orders and other legal requirements that are directly or indirectly related to the Contractor's performance under the contract, including procurement of required permits, certificates, licenses, insurance, approvals, and inspections.

The Contractor shall comply with the Code of Virginia including Section 2.2-4300, the Virginia Procurement Act; well as the City Code, Ordinances, Laws and Policies which are all incorporated herein by reference.

### **4. Authorized Dealer/Distributor Responsibilities**

The Contractor, as the manufacturer or an authorized dealer/distributor of the products specified in the solicitation, hereby transfers all rights, including software rights, licenses and documentation to the City upon product acceptance.

### **5. Procedures**

The extent and character of the services to be performed by the Contractor(s) or products delivered shall be subject to the general control and approval of the City's Project/Contract Manager assigned under the contract, the Purchasing Manager or his/her authorized designee(s). The contractor shall only comply with requests and/or orders issued by the Project/Contract Manager or his authorized designee(s) acting within their authority for the City.

All communications between the parties relating to material contractual issues shall be through the Purchasing Agent and any material change to the contract must be approved in writing by

the Purchasing Agent and the Contractor to be deemed binding.

## **6. Key Personnel/ Project Staff**

Any personnel named in the offer details will remain responsible for performance of the described task(s) throughout the period of any contract resulting from the solicitation. No diversion or replacement may be made without advance written notice to the Purchasing Agent and submission of a resume of the proposed replacement for review and approval by the City.

NO substitutions, additions or cancellations, including those of key personnel, are permitted after Contract award without written approval by the City's Purchasing Agent or his/her designee. Where specific employees are proposed by the Contractor for the work, those employees shall perform the work as long as those employees work for the Contractor, either as employees or subcontractors, unless the City agrees to a substitution. Requests for substitutions shall be reviewed, including submission of a resume for the proposed replacement, for approval approved by the City at its sole discretion.

The City will, throughout the life of the contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the project by the Contractor. If the City reasonably rejects staff or subcontractors, the Contractor must provide replacement staff or subcontractors satisfactory to the City in a timely manner and at no additional cost to the City. The day-to-day supervision and control of the Contractor's employees shall be the sole responsibility of the Contractor.

Where required, personnel used by the Contractor to perform under the contract shall be licensed and certified as required by the Virginia Board for Contractors. Contractors shall submit evidence of licensing, trades certification and training within five (5) calendar days of the City's request. The City reserves the right to reject any of Contractor's service personnel who, in the City's judgment, are not adequately qualified to perform the work.

## **7. Purchase Orders**

Contractor shall not start work prior to the receipt of a purchase order. A purchase order may be enclosed with the resulting contract or may be issued shortly thereafter, and will become an integral part of the resulting contract.

Any purchase order issued by the City which references this solicitation or resultant contract, shall be deemed to be placed under and incorporate the terms and conditions of this solicitation or resultant contract as well as any supplemental terms and conditions agreed to by the parties in writing. However, the City's failure to specifically incorporate, identify, or reference the contract on any purchase order shall in no manner affect the applicability of these terms and conditions.

Except as provided herein, Contractors providing goods or services without a signed City purchase order, do so at their own risk. The City will not be liable for payment of any purchases made by its employees without appropriate purchase authorization signed by City's Purchasing Agent.

In case of an emergency as defined by the City Project Manager, Contract Manager or other authorized representative, the Contractor shall cooperate to the extent reasonably requested with the understanding that a Purchase order will follow.

Orders for less than \$1,000.00 do not require a Purchase Order.

## **8. Work Site Damages**

Any damage to property, whether owned by the City or others, resulting from work performed under this contract, shall be repaired or replaced to the City's satisfaction at the Contractor's expense. Contractor shall immediately notify City of any such damages.

## **9. Ownership of Documents, Materials and Products**

Ownership of all data, materials, and documentation originated and prepared for the City pursuant to the solicitation shall belong exclusively to the City and be subject to public inspection in accordance with the Virginia Freedom of Information Act. All work under the

Contract, compilation of notes, work sheets, and any and all interim and final products and materials shall be the sole property of the City.

Any reports, specifications, drawings, blueprints, negatives or other documents/deliverables obtained or prepared by the Consultant in the performance of its obligations under the Contract shall be the exclusive property of the City of Falls Church, and all such materials shall be returned to the owner upon completion, termination, or cancellation of this Contract. The Consultant shall provide both hard copies and electronic copies of all deliverables produced under this contract, in formats as requested by the City. Consultant shall deliver signed/sealed documents as required by law and as requested by the City. The Consultant shall not use, willingly allow, or cause such materials to be used for any purpose other than performance of all Consultant work under the Contract without the prior written consent of the City. Documents and materials developed by the Consultant under the Contract shall be the property of the City; however, the Consultant may retain file copies, which may not be used without prior written consent of the Owner.

#### **10. Use Of Information:**

Any specifications, drawings, sketches, models, samples, tools, computer or other apparatus programs, technical or business information or data, written, oral, or otherwise (all hereinafter designated "Information") which the City furnished, or shall furnish, to the Contractor under the contract or in contemplation of this agreement, or that Contractor comes in contact with on City premises or under City control, shall remain City property. All copies of such information in written, graphic or other tangible form, and all information, ideas, discoveries, improvements, derived from or reflecting such information, shall be returned to City at its request, and in any event within thirty (30) days after the expiration or termination of the contract. Unless such information was previously known to Contractor free of any obligation to keep it confidential, or has been or is subsequently made public by City or a third party without breach of any agreement, it shall be kept strictly confidential and shall be used only in performing services under this Agreement, and may not be used for other purposes except upon such terms as may be agreed upon between Contractor and City in writing. Unless approved in writing by the Purchasing Agent, the Contractor may not sell or give to any individual or organization any information, reports, or other materials given to, prepared, or assembled by the Contractor under the final contract.

#### **11. Workmanship, Inspection and Acceptance**

Insofar as possible, the Contractor, in carrying out his/her work, must employ such methods or means as will not cause interruption of or interference with the work of any other Contractor, or City personnel at the site.

All work under the resulting contract shall be performed in a skillful and workmanlike manner. The City may, in writing, require the Contractor to remove any employee from work that the City deems incompetent or careless.

The City reserves the right and may, from time to time, conduct any test and/or make inspections of the work performed, being performed or good delivered or being delivered under the contract. Any inspection by the City does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements. The presence of an authorized City representative or agent ("Inspector") shall not lessen the obligation of the Contractor for performance in accordance with the contract requirements, or be deemed a defense on the part of the Contractor for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.

If goods or services do not conform to requirements, in addition to all other rights and remedies City may have, the City may reject the goods or services in full or part. Non-conforming goods may be returned or non-conforming services rejected at the City's option for refund, credit or replacement at Contractor's expense. Goods rejected upon receipt remain the property of

Contractor. The City's inspection, or lack of inspection, shall not affect any express or implied warranties, nor shall the City waive any rights to return goods which contain latent defects discovered in the testing of the City's products containing such goods. Nothing in this section affects or limits any of the City's rights or remedies available under the contract.

Nothing in the section shall prohibit or restrict the City's right to return goods not accepted by the City within a reasonable period of time without penalty or restocking fees.

If the City has paid Contractor for all or part of the Services that are ultimately rejected or not accepted by the City, or if the City later determines that Contractor's performance of Services was performed in a manner that breached the terms of this Agreement, Contractor shall (in addition to any other remedy available to City) return to City all amounts paid for such Services.

## **12. Task Order Cost Proposals**

The City may require the Contractor to provide a cost proposal for an individual task order to include the Contractor's hours to perform the work based upon their fixed hourly rates contained in any resultant contract. The cost proposal shall also contain the Contractor's costs separated by task; detailed subcontractor costs; a narrative describing work to be performed and the estimated time for completion and other details as may be required by the City. After review and acceptance of the task order proposal, the City will issue a purchase order to perform the work, or if the task is for less than one thousand dollars (\$1,000), the City may issue an Authorization to Proceed letter, signed by a duly authorized City representative. The proposal shall be prepared at no additional cost to the City.

When the scope of services for the task order involves work of such a nature that the Contractor cannot reasonably estimate the time which would be required to provide the services, the City may, at its sole option, agree to an Hourly Rate Purchase Order based on the actual hours worked times the hourly rates indicated in the Contractor's binding fee schedule and other approved expenses. A maximum Purchase Order fee or cost not to exceed limitation shall be agreed upon for Hourly Rate Purchase Orders. When an Hourly Rate Purchase Order is used, the Contractor shall submit detailed time records, documentation for other expenses, and such other evidence as the City may require to support the Contractor's billing request.

For Services required by the City that are not specifically identified in the Contract Fee Schedule but covered under the scope of this Contract, the Consultant shall submit to the City Project Manager, in the task order cost proposal, the detailed costs for these Services.

Any Contractor Technician time shall only be payable for on-site time. Any overtime rates require advance written notice and approval of the City. Such approved overtime rates shall only apply after forty (40) hours of work per week.

For architectural or professional engineering services relating to construction projects, the sum of all Task Orders/projects performed in one contract term and the project fee of any single task order/project shall not exceed limits set in the current VPPA.

## **13. BPOL License Requirement**

Contractor shall be licensed in accordance with the City's "Business, Professional, and Occupational Licensing (BPOL) Tax" Ordinance. All questions regarding the BPOL license requirement and tax should be referred to the Office of the Commissioner of the Revenue, 300 Park Avenue, Suite #104E, Falls Church, Virginia 22046-3301; Phone: (703) 248-5019; Fax: (703) 248-5212.

## **14. Payment Terms**

Payment will be made to Contractor once each month based upon satisfactory and actual services rendered and/or goods received and invoices submitted by Contractor. All such invoices will be paid net thirty (30) days after receipt of an undisputed invoice unless (i) more favorable terms are stated on Contractor's invoice and the City elects to pay on such terms, or (ii) any items thereon are questioned, in which event payment will be withheld pending

verification of the amount claimed and the validity of the claim. The Contractor shall provide complete cooperation during any such investigation.

Payment terms shall appear on Contractor's invoice. Any discount period shall be computed from the date of proper receipt of the Contractor's correct invoice. Late payment charges shall not exceed the allowable rate specified in §2.2-4352 of the VPPA (1% per month).

The City reserves the right to withhold any or all payments or portions thereof for Contractor's failure to perform in accordance with the provision of the contract or any modifications thereto.

Payment by the City of invoices does not mean or imply that the goods or services have been accepted and does not impair or limit in any way the City's full rights and remedies which shall be and remain as set forth hereof.

## **15. Invoicing**

All invoices to the City shall reference the applicable Purchase Order number and be submitted by the Contractor to the name and address on the Purchase Order unless otherwise directed by the City.

The prices and payments shall be full compensation for the goods, services, labor, tools, equipment, transportation and all other incidentals necessary to deliver the goods and/or complete the services ordered.

Conflicting pre-printed provisions on the reverse or front of the Contractor's form(s) shall be deemed deleted.

Invoices for final payment shall be submitted within thirty (30) days after completion and acceptance of the work or acceptance of the goods unless otherwise specified in the contract or mutually agreed upon in writing.

The City will not honor, process or pay invoices submitted by subcontractors.

## **16. Changes**

The City may, at any time, by written order, require changes within the general scope of the services to be performed or the products to be provided under contract.

If such changes cause an increase or decrease in the Contractor's cost of, or time required for performance of any services or provision of products under the contract, within fifteen (15) days (or other mutually agreeable time period) of receipt of a change order, the Contractor shall submit a written proposal for any equitable adjustment to the contract price, delivery schedule, or both. Upon mutual agreement, authorized representative of the parties shall then agree to and sign such modification to the purchase order or contract. Contractor's receipt and performance of a Purchase Order detailing such changes shall be deemed acceptance.

The Contractor shall not begin work on any alteration requiring a change order until the agreement, setting forth the changes/modifications, has been executed by the City and the Contractor or associated Purchase Order received. No products or services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the City.

If a satisfactory agreement cannot be mutually agreed to for any item requiring a change order, the City reserves the right to terminate the contract as it applies to the items/services in question and make such arrangements as may be deemed necessary to complete the work.

No payment shall be made to the Contractor for any extra material or services, or of any greater amount of money than stipulated to be paid in the contract, unless some changes in or additions to the contract requiring additional outlay by the Contractor shall first have been expressly authorized and ordered in writing by change order or Contract Amendment.

## **17. Additions/Deletions:**

The City reserves the right to add similar items/services or delete items/services specified in the resultant contract as requirements change during the period of the contract by contract



amendment. The City and the Contractor will mutually agree to prices for items/services to be added to the contract and/or reduction in overall costs for items/services deleted.

## **18. Safety**

All contractors and subcontractors performing services for the City are required to comply with OSHA standards, all other Federal and State guidelines, and other industry accepted safety rules and regulations.

Precaution shall be exercised at all times for the protection of persons (including employees) and property.

The Contractor and all subcontractors are to comply with the Occupational Safety and Health Act of 1970, Public Law 91-956, as it may apply to this Contract.

Contractor(s) shall be held responsible for the safety of their employees and any unsafe acts or conditions that may cause injury or damage to any persons or property within and around the work site area under this contract. The City has sole right to dismiss contractors and/or subcontractors for non-compliance to the above rules and regulations and/or safety violation. The contractor must rectify all safety concerns prior to continuance of work.

## **19. Communications**

At least one on-site worker who has supervision authority must be conversant in the English language. This is necessary because of the need to provide job instructions, ensure compliance with safety regulations and communicate with City staff and/or other contractors on site. The City shall be sole judge of the communication level of the contractor's employees. Failure to have an English-speaking worker on each job is cause to halt work until the situation is remedied. Should this happen, it shall be at no additional cost to the City.

## **20. Warranties and Guarantees**

Contractor warrants to the City that services provided hereunder shall be diligently, efficiently and skillfully performed in a manner which meets or exceeds the highest prevailing standards in the industry, and in accordance with applicable specifications.

Contractor represents and warrants that all products will be new, free from defects in material or workmanship and will conform to, comply, function and perform in accordance with the requirements and specifications, and that Contractor will make all necessary adjustments, repairs and replacements to maintain all goods in such condition during the term of the applicable warranty, in accordance with the terms and conditions hereof. Unless otherwise specified such adjustments, repairs and replacements will be provided at no additional cost to the City during the applicable warranty term. Contractor further warrants that each product furnished under the contract will perform such general and specific operations and have such general and specific characteristics as described and claimed for them in any of Contractor's published literature, descriptions and specifications whether or not such literature, descriptions and specifications are included in or referenced by a Purchase Order or this Agreement.

All warranties shall survive inspection, acceptance and payment.

Contractor's and/or manufacturer's warranty shall cover all parts and factory labor. Any warranty specified by the Contractor shall not act to void longer guarantees given by the manufacturer of the equipment or its components.

The Contractor agrees to: furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the City may reduce the said services at any time; enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence; and render all work and services in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods, and procedures of all government boards, bureaus, offices, and other agents.

The City's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.

All periods of warranty, and periods of manufacturers' product and/or equipment warranties shall commence on the date of Acceptance of the Work and shall extend for a minimum period of one year thereafter

## **21. Default**

In case of failure to deliver products, to meet specifications, in accordance with the contract terms and conditions, the City, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the City may have.

## **22. Contract Disputes Resolution**

Arbitration shall not be applicable for the resolution of disputes between City and Contractor. Disputes by the Contractor with respect to this Contract shall be decided in the first instance by the City's Purchasing Agent. The Purchasing Agent will, after receipt of a letter from the Contractor addressed to the Purchasing Agent detailing the nature of the dispute, pertinent facts, and the Contractor's desired outcome, reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. This decision shall be final and binding unless within twenty (20) days from the date of such decision, the Contractor submits or otherwise furnishes and the Purchasing Agent receives a written appeal addressed to the Purchasing Agent and City Manager. The decision by the City Manager shall be final and binding unless set aside by a Court of competent jurisdiction as fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not to be supported by any evidence. Pending a final determination of a properly appealed decision, the Contractor shall proceed diligently with the performance of the Agreement in accordance with that decision.

Contractual claims, whether for money or other relief, shall be submitted by Contractor in writing no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Any notice or dispute shall be delivered to the City's Purchasing Agent, 300 Park Avenue, 3rd Floor East Wing, Falls Church, VA and shall include a description of the factual basis for the dispute and a statement of the amounts claimed or other relief requested.

A Contractor may not institute legal action until all statutory requirements have been met or prior to receipt of City's decision on the claim.

Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

Any notices to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt. Any notice shall be effective only upon delivery, which for any notice given by facsimile shall mean notice which has been received by the party to whom it is sent as evidenced by confirmation slip from that person.

## **23. Termination**

Subject to the provisions below, the contract may be terminated by the City upon written notice; but if any work or service hereunder is in progress, but not completed as of the date of termination, then the contract may be extended upon written approval of the City until said work or services are completed and accepted.

In every such event in which the City shall terminate the services of the Contractor, the Contractor is obligated and agrees to refund the City any and all monies paid (including advance payments) to

it by the City for products not delivered and/or services not rendered by said Contractor as of the date on which Contractor shall receive Notice of Termination.

The City may exercise the City's right of setoff as to any amounts the City may owe the Contractor. The City may require Contractor to transfer title and deliver to the City any or all items produced or procured by Contractor under this contract for performance of the work terminated.

a. Termination for Convenience

The City may cancel and terminate the contract in part or in whole, without penalty for its convenience. Any such termination shall be effected by delivery of a written Notice of Termination to the Contractor at least ten (10) business days prior to the effective date. After receipt of a notice of termination, the Contractor must stop all work and deliveries under the purchase order/contract on the effective date and to extent specified in the notice. However, any termination notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issues prior to the effective date of the termination. A reasonable, equitable adjustment in the contract price shall be made for completed performance, but no amount shall be allowed for anticipated profit on unperformed services.

b. Termination for Cause

The City may terminate the contract at any time, without penalty, by written notice to the Contractor for: (1) cause, default, or negligence ("default") on the part of the Contractor; or (2) if the Contractor should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Contractor's insolvency ("bankruptcy"). In the case of termination for cause, advance written notice by the City is not required. In addition to any right to terminate, the City may enforce any remedy available at law or in equity in connection with such default or bankruptcy, and the Contractor shall be liable for all damages to the City resulting from Contractor's default or bankruptcy.

In the event any Termination for Cause is found to be improper or invalid by any court of competent jurisdiction, then such termination shall be deemed to have been a Termination for Convenience.

c. Termination Due to Unavailability of Funds in Succeeding Fiscal Years

Multiyear contracts may be continued each fiscal year only after funding appropriations and program approval have been granted by the appropriate City authority. If necessary funds are not appropriated or otherwise made available to support continuation of the performance of the contract in a subsequent fiscal year, then the contract shall be canceled on the last day of the then current fiscal year or when the appropriation made for the then current year for the services covered by this Contract is spent, whichever event occurs first, and the Contractor shall be reimbursed for the reasonable value of any documented nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under this agreement. No amount shall be allowed for anticipated profit on unperformed services.

## **24. Delays/Service Failure**

Failure of a Contractor to deliver products or services within the time specified, or within reasonable time as interpreted by the City, or failure to make replacements/corrections of rejected products/services when so requested, immediately or as directed by the City, shall constitute authority for the City to purchase in the open market products/services of comparable grade/quality to replace the services, products rejected, and/or not delivered. Should public necessity demand it, the City reserves the right to use or consume articles delivered or services performed which are substandard in quality, subject to an adjustment in price to be determined by the City.

If delay is foreseen, Contractor shall give thirty (30) days prior written notice to the designate City Project Manager. The City has the right to extend delivery date if reasons appear, in the sole discretion of the City, to be valid. Contractor must keep the City advised at all times of



status of order. Except as otherwise provided in the contract, default in promised delivery or failure to meet specifications, authorizes the City to purchase supplies, equipment, or services elsewhere and charge full increase in cost and handling to defaulting Contractor.

## **25. Indemnification**

The Contractor agrees to indemnify and hold harmless the City of Falls Church, Virginia, its officers, agents, and employees from any liability, claim, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the contractor or any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using department or to failure of the using department to use the materials, goods or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered. The Contractor agrees to protect the City from claims involving infringement of patent or copyrights.

Contractor expressly understands and agrees that any performance bond or insurance protection required by this contract, or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and hold harmless and defend the City as herein provided.

The Contractor shall also save the City, its officers, agents and employees harmless from liability of any nature or kind for the use of any copyrighted or un-copyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a Contract for which the Contractor is not the patentee, assignee, licensee or City.

The Contractor shall protect the City against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery; furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible and protect the City from loss or damage to City owned property while it is in the custody of the Contractor.

If the Contractor uses any design, device, or materials covered by letters patent or copyright, it is mutually agreed and understood without exception that the contract price includes all royalties or costs arising from the use of such design, device, or materials in any way involved with the work.

## **26. Insurance**

- a. The Contractor is responsible for its work and for all materials, tools equipment, appliances, and property of any and all description used in connection therewith. The Contractor assumes all risk of direct and indirect damage of or injury to any person or property wherever located, resulting from any action, omission, commission or operation under the contract, or in any way whatsoever with the contracted work.
- b. The Contractor shall, during the continuance of all work under the contract provide the insurance as detailed below:
  - 1) Maintain statutory Workers' Compensation and Employer's Liability insurance in limits of not less than \$100,000 to protect the contractor from any liability or damages for any injuries (including death and disability) to any and all of its employees, volunteers, or subcontractors including any and all liability or damage which may arise by virtue of any statute or law in force within the Commonwealth of Virginia, or which may be hereinafter enacted.
  - 2) Commercial General Liability - \$1,000,000 combined single limit coverage with \$2,000,000 general aggregate covering all premises and operations and including Personal Injury, Completed Operations, Contractual Liability and, where applicable to the project (as determined by APS), Products and Independent Contractors. The general aggregate limit shall apply to this project.

- 3) Maintain owned, non-owned, and hired Automobile Liability insurance, in the amount of \$1,000,000 per occurrence/aggregate, including property damage, covering all owned, non-owned, borrowed, leased, or rented vehicles operated by the contractor. In addition, all mobile equipment used by the contractor in connection with the contracted work, will be insured under either a standard Automobile Liability policy, or a Commercial General Liability policy. The Garage Keeper's Liability coverage shall also be maintained where appropriate.
- 4) Maintain Contractors Liability insurance in the amount of \$1,000,000 per occurrence/aggregate to insure against loss due to liability imposed upon an owner/contractor for acts arising out of the operations of independent contractors/subcontractors or out of an owner's/contractor's supervisory activity.
- 5) Maintain Professional Liability Insurance. The policy shall cover the City for all sources of liability which would be covered by the latest edition of the standard Errors and Omissions Liability Coverage Form (E&O), as filed for use in the Commonwealth of Virginia by the Insurance Services Office, without the attachment of restrictive endorsements.

Professional Services: Professional services (work performed by an independent contractor, within the scope of the practice of accounting, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, or professional engineering) shall require a certificate of insurance showing professional liability/errors and omissions coverage insurance with companies authorized or licensed to do business in Virginia, prior to the commencement of services. Certain other service providers shall meet the same requirements (including but not limited to asbestos design/inspection/or abatement contractors, and other health care practitioners).

The E&O Policy shall include the successful Offeror and the Offeror's subcontractors of every tier as the Offeror designated in the declarations.

The minimum E&O Policy limits to be provided by the successful Offeror (inclusive of any amounts provided by an umbrella or excess policy) shall be \$1,000,000 per occurrence combined single limit for bodily injury liability and property damage liability. The limits afforded by the E&O Policy (or umbrella or excess policy with respect to it) shall apply only to the City and City's officials, officers, agents and employees and only to claims arising out of or in connection with the work under this contract.

Notice of Cancellation and/or Restriction - The policy must be specifically endorsed to provide the City with forty-five (45) days' notice of cancellation, non-renewal, change in coverages, and/or restriction.

- 6) Maintain Environmental Impairment Liability Insurance (if applicable) including sudden and accidental pollution and in transit coverage as well as coverage for storage at site in the limits of \$2,000,000 per occurrence/aggregate where appropriate.
- 7) Liability insurance may be arranged by General Liability and Automobile Liability policies for the full limits required or by a combination of underlying Liability policies for lesser limits with the remaining limits provided by an Excess or Umbrella Liability policy.
- 8) Liability Insurance "Claims Made" basis: If the liability insurance purchased by the contractor has been issued on a "claims made" basis, the contractor

must comply with the following additional conditions. The limit of liability and the extensions to be included as described previously in these provisions, remain the same. The Contractor must either:

- a. Agree to provide certificates of insurance evidencing the above coverage for a period of two years after final payment for the contract. This certificate shall evidence a "retroactive date" no later than the beginning of the Contractors or sub-contractors work under this contract, or
  - b. Purchase the extended reporting period endorsement for the policy or policies in force during the term of this contract and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself.
- 9) The Contractor agrees to provide insurance issued by companies admitted within the Commonwealth of Virginia, with the Best's Key Rating of at least A:VI.
  - 10) The Contractor will provide an original, signed Certificate of Insurance citing the contract number and such endorsements as prescribed herein before any work is started. In addition, the Contractor will secure and maintain all insurance certificates of its subcontractors, which shall be made available to the City on demand.
  - 11) The Contractor will provide on demand certified copies of all insurance policies related to the contract within ten (10) business days of demand by the City. These certified copies will be sent to the City from the Contractors insurance agent or representative. During the period of the contract, the City reserves the right to require the contractor to furnish certificates of insurance for the coverage required
- c. No change, cancellation, or non-renewal shall be made in any insurance coverage without a forty-five (45) day advance written notice to the City. The Contractor shall furnish a new certificate prior to any change or cancellation. The failure of the Contractor to deliver a new and valid certificate will result in suspension of all payments until the new certificate is furnished.
  - d. Compliance by the Contractor and all subcontractors with the foregoing requirements as to carrying insurance shall not relieve the Contractor and all subcontractors of their liabilities provisions of the contract.
  - e. Contractual and other liability insurance provided under this contract shall not contain a supervision, inspection or engineering services exclusion that would preclude the City from supervising and/or inspecting the project as to the end result. The Contractor shall assume all on-the-job responsibilities as to the control of persons directly employed by it and of the subcontractors.
  - f. Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the City. The Contractor shall be as fully responsible to the City for the acts and omissions of the subcontractors and of persons employed by them as it is for acts and omissions of persons directly employed by it.
  - g. The City, its officers and employees shall be named as an "additional insured" in the Automobile and General Liability policies and it shall be stated on the Insurance Certificate that this coverage "is primary to all other coverage the City may possess."
  - h. Where required by federal and/or state agreements with the City, offeror/bidder will cooperate and comply with the City's requirements under such agreement and add third party additional insured. When the City's funding sources so require, the

Contractor shall agree to the City's reasonable requests and furnish the Insurance Certificate containing specified wording (e.g., naming the Northern Virginia Transportation Authority - NVTa or its Bond Trustee as "additional insured" for Special Transportation Fund projects).

- i. If an "ACORD" Insurance Certificate form is used by the Contractor's insurance agent, the words, "endeavor to" and "..... but failure to mail such notice shall impose no obligation or liability of any kind upon the company" in the "Cancellation" paragraph of the form shall be deleted or crossed out.
- j. Insurance coverage required by this solicitation shall be in force throughout the contract term. Should the Contractor fail to provide acceptable evidence of current insurance within five (5) days of written notice at any time during the contract term, the City shall have the absolute right to terminate the contract without any further obligation to the Contractor, and the contractor shall be liable to the City for the entire additional cost of procuring the uncompleted portion of the contract at the time of termination.

## **27. Correspondence**

All communications between the parties relating to material contractual issues shall be through the Purchasing Agent and must be in writing to be deemed binding.

## **28. Quality**

All services shall be performed in a first class workmanlike manner in accordance with current industry standards.

All products provided shall be new, not refurbished, free of material cosmetic defects, latest model, design or pack and in first class condition, including containers suitable for shipments and storage, unless otherwise indicated herein. Products shall meet or exceed industry standards for quality and reliability. Product design and construction must be consistent with current best industry or engineering practices.

All products and services shall meet the then current applicable local, state and federal rules and guidelines.

## **29. Brand Name Or Equivalent Items**

Unless otherwise specified herein, the name of a certain brand, make or manufacturer does not restrict Offerors to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the product desired, and any product which the City, in its sole discretion, determines to be the equivalent of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, will be accepted.

## **30. Bonding/Contract Security**

The City reserves the right to require a proposal, performance, and/or payment bond for contracts for goods or services if specified in this solicitation in accordance with sections § 2.2-4336. "Bid Bonds", § 2.2-4337 "Performance and Payment Bonds" and other related sections of the VA Public Procurement Act. In such case, the successful Offeror shall bear the cost and be required to furnish such bid, performance, and/or bond in the specified amount with the bid and/or before award of contract, as applicable. The parties shall mutually agree upon the form of the bond document/agreement. If no bond can be furnished by the successful Offeror, the City reserves the right to award the contract to the next most highly qualified and responsible Offeror in the best interest of the City.

## **31. News Release/Publicity By Contractors**

As a matter of policy, the City does not endorse the products or services of a Contractor. News releases or other publicity concerning any resultant contract from this solicitation will not be made by a Contractor without the prior written approval of the City. All proposed news releases will be routed to the Purchasing Agent for review and consideration of approval.

### **32. Emergency Purchases**

If the Contractor is unable to provide the required service for any period of time, except as provided in the Section "General Terms and Conditions", paragraph entitled "FORCE MAJEURE", the Contractor is responsible for providing a backup service, satisfactory to the City, to the City at no additional cost to the City. The City reserves the right to make arrangements for service, under emergency conditions from other sources, should the Contractor be unable to provide the required service within the required time frame. If this occurs, the City further reserves the right to recover all costs from the Contractor.

### **33. Americans With Disabilities Act Requirements**

The City is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all City programs, activities and services. The City government contractors, subcontractors, vendors, and/or suppliers are subject to this ADA policy. All individuals having any City contractual agreement must make the same commitment. Your acceptance of any contract resulting from this solicitation acknowledges your commitment and compliance with ADA.

### **34. Immigration Reform And Control Act**

By entering into a written contract with the City, the Contractor certifies that the Contractor does not, and shall not, during the performance of the Contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

### **35. Virginia Freedom Of Information Act**

All proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act.

### **36. Funding**

A contract shall be deemed binding only to the extent of appropriations available for the purchase of goods and services.

### **37. Assignment**

The Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this contract, without the prior written consent of the City.

If the Contractor desires to assign his/ her right to payment of the contract, Contractor shall notify the City's Purchasing Agent immediately, in writing, of such assignment of right to payment. In no case shall such assignment of contract relieve the Contractor from his or her obligations or change the terms of the contract.

### **38. Force Majeure**

Neither party shall be liable for any delay or failure to perform its obligations in connection with any action described in this Agreement, if such failure results from any act of God, riot, war, civil unrest, flood, earthquake, acts by the public enemy, or other cause beyond such party's reasonable control (including any mechanical, electronic, or communications failure, but excluding failure caused by a party's financial condition or negligence).

### **39. Record Retention/Audits**

The Contractor shall maintain accurate records of all invoices, amounts billable to and payments made by the City, during the performance of the contract and for a period of three (3) years from the completion of this agreement. Such records shall include, but not be limited to: all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices, including the Contractor's copies of periodic estimates for partial



payment; ledgers, cancelled checks; deposit slips; bank statements; journals; contract amendments, and change orders; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Such records shall be available to the City on demand and without advance notice during the Contractor's normal working hours. City personnel or designee may perform in-progress and post-audits of the Contractor's records.

#### **40. Payments To Subcontractors**

Within seven (7) days after receipt of amounts paid by the City for work performed by a subcontractor under this Agreement, the Contractor shall either:

- a. Pay the subcontractor for the proportionate share of the total payment received from the City attributable to the work performed by the subcontractor under this agreement; or,
- b. Notify the City and subcontractor, in writing, of its intention to withhold all or a part of the subcontractor's payment and the reason for non-payment.

The Contractor shall pay interest to the subcontractor on all amounts owed that remain unpaid beyond the seven-day period except for amounts withheld as allowed in item b. above.

Unless otherwise provided under the terms of this agreement, interest shall accrue at the rate of one percent (1%) per month.

The Contractor shall include this provision in each of its subcontracts requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor. The Contractor's obligation to pay an interest charge to a subcontractor pursuant to this provision may not be construed to be an obligation of the City.

#### **41. Time Of The Essence**

Time is of the essence in respect to all provisions of the contract that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this agreement.

Maintaining design schedules is of critical importance to City projects. Design changes or developments that may affect design schedules should be evaluated for time impact at the onset. If delay of over 10 days is foreseen, the Consultant shall give immediate written notice to the City Project Manager. The Consultant must keep the City advised at all times of status of work. Default in scheduled completion (without documented reasons) or failure to meet scope of services, shall authorize the City to purchase services elsewhere and charge full increase in cost to the defaulting Consultant or deduct the costs from any balance owed the Consultant.

#### **42. Reports**

The Contractor must submit status reports as requested and appropriate to the tasks and projects that are developed under contract in a form, format and frequency satisfactory to the City.

#### **43. Antitrust**

By entering into a contract, the contractor conveys, sells, assigns and transfers to the City all rights, title, and interest in and to all causes of action the Contractor may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the goods or services purchased or acquired by the City under said contract.

#### **44. Relationship of the Parties**

The Contractor will be legally considered to be acting solely as an independent contractor and neither the Contractor nor its employees or subcontractors will, under any circumstances, be considered servants or agents of the City. The City will not be legally responsible for any negligence or other wrongdoing by the Contractor, its servants or agents. The City will not

withhold from the contract payments to the Contractor any federal or state unemployment taxes, federal or state income taxes, social security tax, or any other amounts for benefits to the Contractor. Further, the City will not provide to the Contractor any insurance coverage or other benefits, including workers' compensation, normally provided by the City for its employees or officers.

Persons furnished by the respective parties shall not be considered employees of the other party for any purpose. Nothing contained in the solicitation or any resultant contract is intended to give rise to a partnership or joint venture between the parties.

#### **45. Severability**

The sections, paragraphs, sentences, clauses and phrases of this Contract are severable, and if any phrase, clause, sentence, paragraph or section of this Contract shall be declared invalid by the valid judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Contract.

#### **46. Non-Waiver**

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of the contract agreement, shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

The City's failure at any time to enforce any of the provisions of the contract or any right or remedy available hereunder or at law or equity, or to exercise any option herein provided will in no way be construed to be a waiver of such provisions, rights, remedies or options or in any way to affect the validity of this agreement. The exercise by the Client of any rights, remedies or options provided hereunder or at law or equity shall not preclude or prejudice the exercising thereafter of the same or any other rights, remedies, or options.

#### **47. Non-Exclusive Market Rights**

It is expressly understood and agreed that except as otherwise specifically provided, the contract neither grants to Contractor an exclusive privilege to sell or provide to the City any or all goods or services of the type described in the contract which the City may require, nor does it require the purchase of any goods or services from Contractor by the City. Contractor understands and agrees that the City is free to and may contract with other manufacturers and Contractors for the procurement of comparable goods or services.

#### **48. HIPAA Compliance**

The Contractor shall comply with all applicable legislative and regulatory requirements of privacy, security and electronic transaction components of the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

#### **49. Confidentiality And Return Of Records**

The Contractor agrees that all findings, memoranda, correspondence, documents or records of any type, whether written or oral, and all documents generated by the Contractor or its subcontractors as a result of the City request for services under this Contract, are confidential records ("Record" or "Records"), and neither the Records nor their contents shall be released by the Contractor, its subcontractors, or other third parties; nor shall their contents be disclosed to any person other than the City's Project Manager or designee. The Contractor agrees that all oral or written inquiries from any person or entity regarding the status of any Record generated as a result of the existence of this Contract shall be referred to the Project Manager or designee for response. At the City's request, the Contractor shall deliver all Records to the Project Officer, including "hard copies" of computer records, and at the City's request, shall destroy all computer records created as a result of the City's request for services under this Contract.

The Contractor agrees to include the provisions of this section as part of any Contract the Contractor enters into with subcontractors or other third parties for work related to work pursuant to this Contract.

No termination of this contract shall have the effect of rescinding, terminating or otherwise invalidating this section.

#### **50. Copyright**

The Contractor hereby irrevocably transfers, assigns, sets over and conveys to the City all right, title and interest, including the sole exclusive and complete copyright interest, in any and all copyrightable works created pursuant to this Contract. The Contractor further agrees to execute such documents as the City may request to affect such transfer or assignment.

Further, the Contractor agrees that the rights granted to the City by this paragraph are irrevocable. Notwithstanding anything else in this Contract, the Contractor's remedy in the event of termination of or dispute over the terms of this Contract shall not include any right to rescind, terminate or otherwise revoke or invalidate in any way the rights conferred pursuant to the provisions of this paragraph. Similarly, no termination of this Contract shall have the effect of rescinding, terminating or otherwise invalidating the rights acquired pursuant to the provisions of this "Copyright" paragraph.

The use of subcontractors or third parties in developing or creating input into any copyrightable materials produced as a part of the Contract is prohibited unless the City approves the use of such subcontractors or third parties in advance and such subcontractors or third parties agree to include the provisions of this paragraph as part of any contract they enter into with the Contractor for work related to work pursuant to this Contract.

#### **51. Data Sources**

The City will provide the Contractor with all necessary and available data possessed by the City that relates to the contract. However, the Contractor is responsible for all costs for acquiring other data or processing, analyzing, or evaluating City data.

#### **52. Conflict Of Interest**

In the event that a conflict of interest arises with Contractor acting as the City's authorized Contractor on a specific job, the City reserves the right to seek professional services elsewhere on the specific job over which the conflict arose.

#### **53. Shipping And Billing**

Unless instructed otherwise by the City, Contractor shall, for Purchase Orders placed hereunder: (1) deliver entire quantity of items ordered to the destination designated in the Purchase Order in accordance with any specific shipping instructions; (2) enclose a packing memorandum with each shipment and when more than one package is shipped, identify the one containing the memorandum; (5) legibly mark or label on the outside of the shipping container the City's Purchase Order number, commodity description and quantity on all packages and shipping papers; (6) render itemized invoices showing Purchase Order number to the billing address on the Purchase Order and (7) utilize standard commercial packaging, packing and shipping containers.

Products shall be shipped by Contractor, F.O.B., Destination, from Contractor's nearest facility capable of meeting the City's requirements using the most cost effective common carrier with transportation charges prepaid by Contractor and added as a separate item to the invoice to be paid by the City. In no event will City be liable for premium shipping modes unless previously authorized.

#### **54. Provisions Required By Law Deemed Inserted**

Each and every provision of laws and clauses required by law to be inserted in a contract resulting from this solicitation shall be deemed to be inserted and incorporated by reference. The contract shall be read and enforced as though the required provisions are included and if

through mistake or otherwise, any such provision is not inserted or not correctly inserted, then upon the application of either party, the contract may be amended to make such Insertion.

## **II. GENERAL DEFINITIONS, CONDITIONS AND INSTRUCTIONS TO OFFERORS**

- A. The general rules and conditions which follow apply to all purchases and become a definite part of each formal solicitation and resulting contract award issued by the City, unless otherwise specified.
  - B. If there is a conflict between the terms and conditions in this “General Conditions and Instructions to Offerors” and the Standard Provisions and/or conditions in other attachments to this solicitation, the latter shall take precedence.
1. **DEFINITIONS:** The terms defined in this section shall have the meanings set forth below whenever they appear in this solicitation regardless of case (capitalized or not), unless the context in which they are used clearly requires a different meaning or a different definition is described for a particular Section or provision:
- a. **OFFEROR:** Any individual, company, firm, corporation, partnership or other organization providing a proposal in response to a solicitation issued by the Purchasing Manager and offering to enter into contract with the City.
  - b. **CONTRACTOR/CONSULTANT:** Any individual, company, firm, corporation, partnership or other organization to whom an award is made by the City.
  - c. **CITY:** City of Falls Church.
  - d. **DAY:** Unless otherwise specified “day” or “days” shall mean calendar days
  - e. **GOODS/PRODUCTS:** All material, equipment, supplies, printing, and/or automated data processing/information technology hardware and software.
  - f. **INFORMALITY:** A minor defect or variation of a proposal from the exact requirements of the Request for Proposal which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.
  - g. **PROFESSIONAL SERVICES:** Any type of professional service performed by an independent contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering.
  - h. **PROPOSAL:** The offer of a supplier to provide goods and/or services in accordance with general specifications or requirements in a Request for Proposal solicitation (RFP). A proposal is subject to scope and price negotiation.
  - i. **PURCHASING AGENT:** The Purchasing Agent employed by the City of Falls Church, Virginia or his/her designee.
  - j. **REQUEST FOR PROPOSAL (RFP):** A request which is made to prospective suppliers (Offeror) for a Proposal. The RFP will specify the evaluation factors to be used and will contain or incorporate by reference other contractual terms and conditions applicable to the procurement.
  - k. **RESPONSIBLE OFFEROR:** An individual, company, firm, corporation, partnership or other organization having the capability in all respects to perform fully the contract requirements, and also having the moral and business integrity and reliability which will assure good faith performance, and having been prequalified, if required.
  - l. **SERVICES:** Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

- m. SOLICITATION: as applicable the RFP or process of notifying prospective Offerors that the City wishes to receive proposals on a set of requirements to provide goods or services.
  - n. STATE: Commonwealth of Virginia.
2. LEGAL ACTION: No Offeror, potential Offeror, or subcontractor shall institute any legal action until all statutory requirements have been met.
  3. CONDITION OF COMMODITIES: All items proposed shall be new, latest model, design or pack and in first class condition, including containers suitable for shipments and storage, unless otherwise indicated in proposal invitation/proposal request. Verbal agreements to the contrary will not be recognized.
  4. SAMPLES: Samples, if required, must be furnished free of expense to the City on or before date specified; if not destroyed in examination, they will be returned to Offeror, if requested, at Offeror's expense. Each sample must be marked with the Offeror's name and address, City's request number and opening date. DO NOT ENCLOSE IN OR ATTACH PROPOSAL TO SAMPLE.
  5. FORMAL SPECIFICATIONS - When a solicitation contains a specification which states no substitutes, no deviation therefrom will be permitted and the Offeror will be required to furnish articles in conformity with that specification. The Offeror shall abide by and comply with the true intent of the specifications and not take advantage of any unintentional error or omission, but shall fully complete every part as the true intent and meaning of the specifications and drawings. Whenever the mention is made of any articles, material, or workmanship to be in accordance with laws, ordinances, building codes, underwriter's codes, A.S.T.M. regulations or similar expressions, the requirements of these laws, ordinances, etc., shall be construed as to the minimum requirements of these specifications.
  6. FEDERAL SPECIFICATIONS - Any Federal Specifications referred to herein may be obtained from the GSA Federal Supply Service Bureau - Specification Section, 470 East L'Enfant Plaza, S.W., Suite #8100, Washington, D.C. 20407 (Voice: 1-202-619-8925, Fax: 1-202-619-8978).
  7. COVENANT AGAINST CONTINGENT FEES - The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For violation of this warranty, the City shall have the right to terminate or suspend this contract without liability to the City or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
  8. LABELING OF HAZARDOUS SUBSTANCES - If the items or products requested by this solicitation are "Hazardous Substances" as defined by 10.1-1400 of the Code of Virginia (1950), as amended, 42 U.S.C. § 11001 et seq., or 42 U.S.C. § 9601 et seq., then the Offeror, by submitting his proposal, certifies and warrants that the items or products to be delivered under this contract shall be properly labeled as required by the foregoing sections and that by delivering the items or products that the Offeror does not violate any of the prohibitions of Sec. 10.1-1400 et seq., or the Code of Virginia or Title 15 U.S.C. Sec. 1263. Material Safety Data Sheets (MSDS) and descriptive literature shall be provided with the proposal or delivered materials for each chemical and/or compound offered.
  9. MATERIAL SAFETY DATA SHEETS - Material Safety Data Sheets (MSDS) and descriptive literature shall be provided with the proposal or delivered materials for each chemical and/or compound offered.
  10. SHIPPING - Unauthorized advance shipments and shipments other than for the quantity ordered are returnable at Contractor's expense. Delivery shall not be deemed complete until the goods have been actually received by City at its facility.
  11. RESPONSIBILITY FOR SUPPLIES TENDERED - Unless otherwise specified in the solicitation, the Contractor shall be responsible for the materials or supplies covered by the contract until they are delivered at the designated point, but the Contractor shall bear all risk on rejected



materials or supplies after notice of rejection. Rejected materials or supplies must be removed by and at the expense of the Contractor promptly after notification of rejection, unless public health and safety require immediate destruction or other disposal of rejected delivery. If rejected materials are not removed by the Contractor within ten (10) days after date of notification, the City may return the rejected materials or supplies to the Contractor at his or her risk and expense or dispose of them as its own property.

12. COMPLIANCE - Delivery must be made as ordered and in accordance with the solicitation or as directed by the City when not in conflict with the contract. The decision of the City as to reasonable compliance with delivery terms shall be final. Burden of proof of delay in receipt of goods by the City shall rest with the Contractor. Any request for extension of time of delivery from that specified must be approved by the City, such extension applying only to the particular item or shipment affected. Should the Contractor be delayed by the City, there shall be added to the time of completion a time equal to the period of such delay caused by the City. However, the contractor shall not be entitled to claim damages or extra compensation for such delay or suspension. These conditions may vary for construction contracts. See Standard or Specific Provisions for the individual solicitation.
13. POINT OF DESTINATION - All materials shipped to the City must be shipped F.O.B. DESTINATION unless otherwise stated in the contract or purchase order. The materials must be delivered to the "Ship to" address indicated on the purchase order.
14. CONTRACT ALTERATIONS - No alterations in the terms of a contract shall be valid or binding upon the City unless made in writing and signed by the City's authorized representative.
15. BANKRUPTCY - If the Contractor should be adjudged bankrupt, or make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of the Contractor's insolvency, then the City may without prejudice to any other right or remedy, terminate the contract Contractor and procure such goods or services from other sources. In such event, the Contractor shall be liable to the City for any additional cost occasioned by such failure or other default. In such cases, the Contractor shall not be entitled to receive any further payment if the expense of finishing the contract requirements, including compensation for additional managerial and administrative services shall exceed the unpaid balance of the contract price, the Contractor shall pay the difference to the City.
16. SUBCONTRACTING - If one or more subcontractors are required, the contractor is encouraged to utilize small, minority-owned and women-owned business enterprises. For assistance in finding subcontractors, contact the Virginia Department of Business Assistance <http://www.dba.state.va.us/>; the Virginia Department of Minority Business Enterprise <http://www.dmbe.state.va.us/>; local chambers of commerce and other business organizations. As part of the contract award, if requested by the City, the prime contractor agrees to provide the names and addresses of each subcontractor and that subcontractor's status as defined by the Commonwealth of Virginia as small, minority-owned and/or woman-owned business and the type and dollar value of the subcontracted goods/services provided.

Except as otherwise specified in the solicitation, the Contractor may subcontract third party issues performed under the contract, but must submit a written list of those subcontractors, their addresses, personnel who will be performing the work, and a description of the work to be performed to the City prior to the work actually being done. The City must agree to the third party's work and reserves the right to deny the third party access if necessary.

17. GENERAL GUARANTY - The Contractor agrees to:
  - a. Save the City, its agents and employees harmless from liability of any nature or kind for the use of any copyrighted or un-copyrighted composition; secret process, patented or unpatented; invention; article or appliance furnished or used in the performance of a Contract for which the Contractor is not the patentee, assignee, licensee or City;
  - b. Protect the City against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit or delivery;
  - c. Furnish adequate protection against damage to all work and to repair damages of any kind to the building or equipment, to his or her own work or to the work of other contractors, for which his or her workers are responsible;

- d. Pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules, and regulations of the City; and
  - e. Protect the City from loss or damage to City owned property while it is in the custody of the Contractor.
18. SERVICE CONTRACT GUARANTY: The Contractor agrees to:
- a. Furnish services described in the solicitation and resultant contract at the times and places and in the manner and subject to conditions therein set forth provided that the City may reduce the said services at any time;
  - b. Enter upon the performance of services with all due diligence and dispatch, assiduously press to its complete performance, and exercise therein the highest degree of skill and competence;
  - c. Render all work and services in strict conformance to all laws, statutes, and ordinances and the applicable rules, regulations, methods, and procedures of all government boards, bureaus, offices, and other agents;
  - d. Allow services to be inspected or reviewed by an employee of the City at any reasonable time and place selected by the City. The City shall be under no obligation to compensate the Proposal for any services not rendered in strict conformity with the contract; and
  - e. Stipulate that the presence of a City inspector shall not lessen the obligation of the Proposal for performance in accordance with the contract requirements, or be deemed a defense on the part of the Proposal for infraction thereof. The Inspector is not authorized to revoke, alter, enlarge, relax, or release any of the requirements of the contract documents. Any omission or failure on the part of the Inspector to disapprove or reject any work or material shall not be construed to be an acceptance of any such defective work or material. Notification of an omission or failure will be documented by the Purchasing Agent.